IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6472 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH MULJIBHAI MEHTA

Versus

COLLECTOR

Appearance:

MR GM JOSHI for Petitioner

MR S.K., PATEL, AGG Respondents

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 10/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, order or direction quashing and setting aside the order passed by the Collector, Amreli dated March 25, 1988 as also by the Additional Chief Secretary

(Appeals), (Revenue Department), Government of Gujarat on January 25, 1989.

The case of the petitioner was that his father was having immovable property at Damnagar, District Amreli. To the south of the said property, there was Government fallow land of uneven shape. As it was appurtenant to the property of the petitioner's father and it was such which could not have been disposed of independently, the father of the petitioner applied for the land and it was granted to him by an order passed by the Assistant Collector and Prant Officer on January 19, 1953.The price of the land, according to the petitioner, was fixed at Rs. 534/- and the father of the petitioner was asked to pay the said amount which he paid.It was also stated that the property was admeasuring 148.83.11 sq.mts.

The case of the petitioner was that the father of the petitioner became absolute owner of the property.

It appears that respondent No.1- Collector passed an order on March 25, 1988 stating therein that land was given on lease to the father of the petitioner for a period of 30 years in 1953 and the said period expired in 1983. In spite of the period being over, possession thereof was not handed over by the petitioner's father to the Collector and hence, proceedings were initiated. Finally, vide the order,dated March 25, 1988,father of the petitioner was asked to hand over possession of the property to the authorities.

Being aggrieved by the said order, a revision application was filed which came to be dismissed by the Government. It is against the said order that the present petition was filed.

Initially, notice was issued in September, 1989 and after hearing parties, Rule was issued and interim relief regarding status-quo was granted. Today, the matter is taken up for final hearing.

Mr. Joshi for the petitioner submitted that the property was not given on lease to the father of the petitioner, but it was a sale and hence, father of the petitioner became absolute owner of the property. He further submitted that even if it is assumed for the sake of argument that property was let to the father of the petitioner and he was having leasehold rights and the period of 30 years was over, as on today, the petitioner is prepared to purchase the said property. He had made such offer even before the authorities below as well as

such prayer is made in the petition. He submitted that other persons were granted such reliefs and that, when he was in possession of the property since last about 50 years, the petitioner has even sentimental value of the property and the authorities have committed an error of law in not granting prayer of the petitioner.

So far as State authorities are concerned, nothing was placed on record as to on what basis, property was given to the father of the petitioner. It was stated in the impugned order itself that record was not available . But from para 3 of the order passed by the Additional Chief Secretary, it appears that for about two years, rent was paid by the father of the petitioner which was reflected from the record. In these circumstances, it was observed in the order that father of the petitioner was having leasehold rights over the property. The Additional Chief Secretary has also observed in the order that if the petitioner wanted the property, he could have made application for sale of the property in his favour, but it was not done.

In the facts and circumstances, in my opinion, ends of justice would be met if the orders are set aside by directing the authorities to consider the case of the petitioner on the basis of documentary evidence available on record as also the prayer made by the petitioner that he is prepared to purchase the land. Since the petitioner is in possession since 1953 and interim relief which was granted by the authorities and by this Court at the time of admission which has continued till today, it is directed that he will not be dispossessed till decision is taken by the authorities. If the petitioner intends to purchase the property, it is open to him to make an application before the competent authority . If such application is made within one month from today, the authorities will decide the same in accordance with law preferably within three months from the receipt of such application. Petition is accordingly disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

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parekh